

AMENDED IN ASSEMBLY APRIL 15, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 3045

**Introduced by Committee on Higher Education (Alquist (Chair),
Bogh (Vice Chair), Havice, Jackson, Liu, Matthews,
Negrete McLeod, Robert Pacheco, and Wyman)**

March 13, 2002

An act to amend Sections 69980, 69982, 69983, 69985, 69986, and 69990 of the Education Code, relating to the Golden State Scholarshare Trust.

LEGISLATIVE COUNSEL'S DIGEST

AB 3045, as amended, Committee on Higher Education. Golden State Scholarshare Trust.

(1) Existing law establishes the Golden State Scholarshare Trust Act, pursuant to which, under regulations adopted by the Student Aid Commission, participants invest money in the Golden State Scholarshare Trust for the benefit of a specific beneficiary for the advance savings for the beneficiary's higher education expenses, as defined, at certain postsecondary educational institutions. Existing provisions of the act define "beneficiary," "institution of higher education," and "qualified higher education expenses" for the purposes of the act by conforming these definitions to those included in the federal Internal Revenue Code as amended by a prescribed federal statute in 1997.

This bill would instead require that these definitions conform to that federal statute as it is amended from time to time, *if*, as determined by the Treasurer, the amendment is consistent with the purposes of this act.

(2) An existing provision of the act limits the overall maximum investment level for a designated beneficiary, as defined, to the maximum estimated qualified higher education expenses, as defined, that can be incurred by a beneficiary to obtain a baccalaureate degree at an institution of higher education, as defined, in California for 5 years commencing in the year the majority of beneficiaries of that age are expected to be eligible to enroll in a higher education program for 4 years.

This bill would delete this 5-year deadline.

(3) Existing provisions of the act require the payment of a penalty upon the cancellation of a participation agreement.

This bill would delete these requirements.

(4) An existing provision of the act requires the Golden State Scholarshare Trust to report prescribed information, including the amount of any missed contributions that the participant is eligible to make up and the names of the State Senator and Assembly Member who represent the district in which the participant or beneficiary resides, to each participant or beneficiary annually by March 1.

This bill would delete the requirement of the reporting of the amount of any missed contributions that the participant is eligible to make up, *and would delete the requirement that the annual report be made by March 1*, and, as to the names of the State Senators and Assembly Members, would require only the reporting of an Internet Web site and a toll-free telephone number where these names may be accessed.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 69980 of the Education Code is
 2 amended to read:
 3 69980. As used in this article, the following terms have the
 4 following meanings, unless the context requires otherwise:
 5 (a) “Act” or “Scholarshare trust” or “Scholarshare” means
 6 the Golden State Scholarshare Trust Act.
 7 (b) “Administrative fund” means the funds used to administer
 8 the Golden State Scholarshare Trust Act.
 9 (c) “Beneficiary” has the same meaning as “designated
 10 beneficiary,” as provided in paragraph (1) of subsection (e) of
 11 Section 529 of the Internal Revenue Code of 1986, as it is amended

1 from time to time, if ~~as determined by the Treasurer~~, *as determined*
2 *by the Treasurer*; the amendment is consistent with the purposes of
3 this article.

4 (d) “Benefits” means the payment of higher education
5 expenses on behalf of a beneficiary by the Scholarshare trust
6 during the beneficiary’s attendance at an institution of higher
7 education.

8 (e) “Board” means the Scholarshare Investment Board
9 established pursuant to subparagraph (B) of paragraph (2) of
10 subdivision (a) of Section 69984.

11 (f) “Golden State Scholarshare Trust” or “Scholarshare trust”
12 means the trust created pursuant to this act.

13 (g) “Institution of higher education” has the same meaning as
14 “eligible educational institution,” as provided in paragraph (5) of
15 subsection (e) of Section 529 of the Internal Revenue Code of
16 1986, as it is amended from time to time, if ~~as determined by the~~
17 ~~Treasurer~~, *as determined by the Treasurer*; the amendment is
18 consistent with the purposes of this article.

19 (h) “Participant” means an individual, trust, estate,
20 partnership, association, company or corporation, a custodian
21 under the California Uniform Transfers to Minors Act (Part 9
22 commencing with Section 3900) of Division 4 of the Probate
23 Code), a state or local government agency, or a legal representative
24 of a participant who has entered into a participation agreement
25 pursuant to this act. “Participant” also means an account owner.

26 (i) “Participation agreement” means an agreement between a
27 participant and the Scholarshare trust, pursuant to this act.

28 (j) “Program administrator” means the administrator of the
29 Scholarshare trust appointed by the board to administer and
30 manage the trust.

31 (k) “Program fund” means the program fund established by
32 this act, which shall be held as a separate fund within the
33 Scholarshare trust.

34 (l) “Qualified higher education expenses” means the expenses
35 of attendance at an institution of higher education as provided in
36 paragraph (3) of subsection (e) of Section 529 of the Internal
37 Revenue Code of 1986, as it is amended from time to time, if ~~as~~
38 ~~determined by the Treasurer~~, *as determined by the Treasurer*; the
39 amendment is consistent with the purposes of this article, and as
40 determined and certified by the institution of higher education in

1 the same manner as prescribed in Title IV of the Higher Education
2 Act of 1965 (20 U.S.C. Sec. 1087ll, as amended).

3 (m) “Tuition and fees” means the quarterly or semester
4 charges imposed to attend an institution of higher education and
5 required as a condition of enrollment.

6 SEC. 2. Section 69982 of the Education Code is amended to
7 read:

8 69982. In addition to effectuating and carrying out all of the
9 powers granted by this act, the board shall have all powers
10 reasonably necessary to carry out and effectuate the purposes,
11 objectives, and provisions of this act pertaining to the Scholarshare
12 trust, including, but not necessarily limited to, the power to do all
13 of the following:

14 (a) Carry out studies and projections in order to advise
15 participants regarding present and estimated future higher
16 education expenses and the levels of financial participation in the
17 trust required in order to enable participants to achieve their
18 education funding objectives.

19 (b) Contract for goods and services and engage personnel ~~as~~
20 ~~necessary~~, including consultants, actuaries, managers, counsel,
21 and auditors, *as necessary* for the purpose of rendering
22 professional, managerial, and technical assistance and advice.

23 (c) Participate in any other way in any federal, state, or local
24 governmental program for the benefit of the Scholarshare trust.

25 (d) Promulgate, impose, and collect administrative fees and
26 charges in connection with transactions of the Scholarshare trust,
27 and provide for reasonable service charges, including penalties for
28 cancellations.

29 (e) Procure insurance against any loss in connection with the
30 property, assets, or activities of the Scholarshare trust.

31 (f) Administer the funds of the Scholarshare trust.

32 (g) Procure insurance indemnifying any member of the board
33 from personal loss or liability resulting from a member’s action or
34 inaction as a member of the board.

35 (h) Adopt reasonable regulations for the administration of the
36 Scholarshare trust.

37 (i) Set minimum and maximum investment levels.

38 (j) (1) Except as otherwise provided in this section, the overall
39 maximum investment level for a designated beneficiary shall not
40 exceed the amount equivalent to the maximum estimated qualified

1 higher education expenses, as defined by subdivision (l) of Section
2 69980 and established by the trust, that can be incurred by a
3 beneficiary. The maximum investment level shall be published by
4 the trust as a monetary amount by year group, in order to state
5 contribution limits clearly and to encourage participation on
6 behalf of beneficiaries who will attend all types of higher
7 education institutions, both public and independent.

8 (2) Participants shall be permitted to make up payments, in full
9 or in part, for years in which they were eligible to contribute, but
10 did not, including years prior to the enactment of this section, for
11 the benefit of a designated beneficiary. Contributions by entities
12 exempt from taxation pursuant to Section 501(c)(3) of the Internal
13 Revenue Code and state and local government agencies operating
14 bona fide scholarship programs for the benefit of beneficiaries to
15 be named when the scholarships are awarded are not subject to
16 maximum contribution limits.

17 SEC. 3. Section 69983 of the Education Code is amended to
18 read:

19 69983. The Scholarshare trust may enter into participation
20 agreements with participants on behalf of beneficiaries pursuant
21 to the following terms and agreements:

22 (a) The board may specify a required minimum length of time
23 before distributions for higher education expenses may be made,
24 and may impose a penalty on the early distribution of funds if
25 deemed by the trust to be necessary.

26 (b) Participation agreements may be amended to provide for
27 adjusted levels of payments based upon changed circumstances or
28 changes in educational plans.

29 (c) Beneficiaries designated in participation agreements may
30 be designated from date of birth.

31 (d) Participants shall be informed that the execution of a
32 participation agreement by the trust shall not guarantee in any way
33 that higher education expenses will be equal to projections and
34 estimates provided by the trust or that the beneficiary named in any
35 participation agreement will do any of the following:

36 (1) Be admitted to an institution of higher education.

37 (2) If admitted, be determined a resident for tuition purposes by
38 the institution of higher education.

39 (3) Be allowed to continue attendance at the institution of
40 higher education following admission.

1 (4) Graduate from the institution of higher education.

2 (5) Have sufficient savings to cover fully all qualified
3 education expenses of attending an institution of higher education.

4 (e) Beneficiaries may be changed as permitted by the
5 regulations of the board upon written request of the participant,
6 provided that the substitute beneficiary is eligible.

7 (f) Participation agreements shall be freely amended
8 throughout their terms in order to enable participants to increase
9 or decrease the level of participation, change the designation of
10 beneficiaries, and carry out similar matters.

11 (g) Each participation agreement shall provide that the
12 participation agreement may be canceled upon the terms and
13 conditions set forth and contained in the regulations adopted by the
14 board.

15 (h) All contributions to Scholarshare accounts shall be in cash.

16 SEC. 4. Section 69985 of the Education Code is amended to
17 read:

18 69985. (a) Any participant may cancel a participation
19 agreement at will. A participant shall be entitled to a refund upon
20 cancellation thereof of an amount equal to the then current market
21 value of the amount of all contributions made to his or her account.

22 (b) Upon the occurrence of any of the following circumstances,
23 no penalty shall be levied by the Scholarshare trust in the event of
24 cancellation of a participation agreement:

25 (1) Death or disability of the beneficiary.

26 (2) The beneficiary's receipt of a scholarship or allowance or
27 payment described in Section 135(d)(1)(B) or (C) of the Internal
28 Revenue Code received by the designated beneficiary, to the extent
29 that the amount refunded does not exceed the amount of the
30 scholarship, allowance, or payment.

31 (c) In the event of cancellation of a participation agreement for
32 any of the causes listed in subdivision (b), the participant shall be
33 entitled to a refund equal to the then current market value of the
34 amount of all contributions made by the participant under the
35 participation agreement.

36 (d) Any cancellation of a participation agreement shall be
37 deemed to be made as of the close of business for the calendar
38 month during which notice of the cancellation is received by the
39 board, and the current market value of contributions as of that date
40 shall be determined by utilizing the monthly report for that month

1 pursuant to subparagraph (B) of paragraph (2) of subdivision (a)
2 of Section 69984.

3 SEC. 5. Section 69986 of the Education Code is amended to
4 read:

5 69986. For all purposes of California law, the following
6 apply:

7 (a) The participant shall retain ownership of all contributions
8 made under any participation agreement up to the date of
9 utilization for payment of higher education costs for the
10 beneficiary, and all interest derived from the investment of the
11 payments made by the participant shall be deemed to be held in
12 trust for the benefit of the beneficiary. Neither the contributions,
13 nor any interest derived therefrom, may be pledged as collateral
14 for any loan.

15 (b) In the event the participation agreement is canceled prior to
16 payment of higher education expenses for the beneficiary, the
17 participant shall retain ownership of all contributions made under
18 the participation agreement and reversionary right to receive
19 interest on all the contributions at the rate of interest at which the
20 contributions were invested.

21 (c) Notwithstanding subdivision (b), if there has been a
22 decrease in the value of the funds in a participant's account at the
23 time of cancellation of the participation agreement, the participant
24 shall not have ownership rights to any amount above the market
25 value of the funds in the account at the time of cancellation.

26 (d) Program administrators shall develop adequate measures to
27 prevent contributions on behalf of a designated beneficiary in
28 excess of those necessary to provide for the qualified higher
29 education expenses of the beneficiary or in excess of the maximum
30 contribution limits provided for ~~herein~~ *in this article*.

31 (e) If the beneficiary graduates from an institution of higher
32 education and has no intention of further attendance at an
33 institution of higher education, and a balance remains in the
34 participant's account, then the program administrator shall pay the
35 balance to the participant.

36 (f) Program administrators shall develop a method to make
37 payment of qualified higher education expenses directly to higher
38 education institutions for the benefit of designated beneficiaries
39 and to control for fraud under any direct reimbursement method
40 of payment that it may adopt. The institution of higher education

1 shall obtain ownership of the payments made for the higher
2 education expenses paid to the institution at the time each payment
3 is made to the institution.

4 (g) Program administrators may also develop a method to make
5 payment of qualified higher education expenses directly to
6 beneficiaries in a manner that is consistent with applicable federal
7 requirements and restrictions.

8 (h) Any amounts paid pursuant to the Golden State
9 Scholarshare Trust that are not listed in this section shall be owned
10 by the trust.

11 (i) A participant may transfer ownership rights to another
12 eligible participant, including, but not *necessarily* limited to, a gift
13 of the ownership rights to an eligible minor beneficiary pursuant
14 to this act. The transfer shall be effected and the property
15 distributed in accordance with administrative regulations adopted
16 by the board or the terms of the participation agreement.

17 (j) Custodians under the California Uniform Transfers to
18 Minors Act (Part 9 (commencing with Section 3900) of Division
19 4 of the Probate Code) may enter into participation agreements in
20 accordance with regulations adopted by the board.

21 SEC. 6. Section 69990 of the Education Code is amended to
22 read:

23 69990. (a) The trust shall provide an annual listing to the
24 Franchise Tax Board on magnetic tape or other machine-readable
25 form, and in a manner agreed upon by the Franchise Tax Board and
26 the Scholarshare trust, of all distributions, including payment of
27 benefits and refunds, to any individual with respect to an interest
28 in a participation agreement. The listing shall include the names,
29 addresses, tax identification numbers, and type and amounts of
30 each distribution, including interest earned and penalties imposed.
31 The taxpayer's identification numbers obtained through the
32 participation agreement process shall be used exclusively for state
33 and federal tax administration purposes.

34 (b) The trust shall make a report to each participant or
35 beneficiary of the type and amount of each distribution, including
36 payment of benefits and refunds.

37 (c) The trust also shall report annually by March 1 to each
38 participant or beneficiary all of the following:

39 (1) The value of the beneficiary's account.

40 (2) The interest earned thereon.

1 (3) The rate of return of the investments in the beneficiary's
2 account for that reporting period.

3 (4) The investment goal the participant will achieve if all future
4 contributions with respect to that beneficiary are timely made.

5 (5) Information regarding the trends in qualified higher
6 education expenses at the state's public segments of higher
7 education, which shall include, but need not be limited to, the
8 following:

9 (A) The actual increase or decrease in qualified higher
10 education expenses in the prior year.

11 (B) To the extent possible, any proposals by the segments to
12 increase or decrease fees or tuition in the next fiscal year.

13 (C) To the extent possible, any proposals by the Legislature or
14 the Governor to increase or decrease fees or tuition in the next
15 fiscal year.

16 (D) An Internet Web site and toll-free telephone number where
17 the names of the State Senator and Assembly Member who
18 represent the district in which the participant or beneficiary
19 resides, and a business address and telephone number where they
20 may be reached, may be accessed.

21 (d) The trust, as an advocate for affordable higher education
22 opportunities for participants and beneficiaries of the program,
23 shall also provide a means for participants or beneficiaries to
24 express concerns or comments regarding the Scholarshare trust
25 program and any information required to be reported by this
26 section.

